LEXOLOGY
Getting The Deal Through

Corporate Governance

in Mexico

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Mexico

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The primary source of law is the Mexican Commerce Code, which provides the general rules applicable to individuals and entities engaged in commercial activities, and the main source of law is the General Law of Business Organisations (LGSM), which sets forth the legal framework and operational rules applicable to commercial corporations and companies, including corporate governance matters. The LGSM regulates six types of commercial companies and corporations, but in practice only two are typically used: stock corporations (SAs) and limited liability companies.

Publicly traded corporations – the shares of which are registered at the National Securities Registry and listed and traded at the Mexican Stock Exchange – are organised as SAs in accordance with the general provisions of the LGSM, but are specifically regulated in their corporate governance and operation by the Securities Market Law (LMV) and by the General Provisions Applicable to Issuers and Other Participants of the Securities Market (CUE) issued by the Banking and Securities National Commission (CNBV). The LMV also sets forth the legal framework and operational rules applicable to an SA adopting an investment promoting a special regime. These companies are known as SAPIs, and they are also organised in accordance with the general provisions of the LGSM but may have a more flexible regime as to shareholders' distribution rights and certain minority rights.

Certain other regulated companies (such as banking institutions, multiple purpose financing companies, insurance and bond companies and credit unions) are required under applicable regulations to be organised as SAs and may also be required to meet particular corporate governance rules.

In 1999, a private council, the Business Coordinator Council (CCE), through the Best Corporate Practices Committee, issued a code establishing recommendations for good corporate governance, which was updated in 2018.

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms whose views are often considered?

The entity responsible for amending the LGSM or the LMV is the Congress of the Union, composed of the Chamber of Deputies and the Senate. There is no government agency responsible for enforcing the corporate governance rules of private companies (as opposed to publicly traded and particularly regulated companies); however, compliance with the LGSM is monitored by the board of directors, the shareholders, statutory and external auditors and creditors. In the case of conflicts or disputes, a competent judicial court (whether federal or local) would be the enforcing authority.

The CNBV is the entity in charge of the surveillance of publicly traded companies and may amend secondary regulations, such as the CUE, from time to time to adapt these to prevailing market conditions and best practices.

Except for the CCE, there are no shareholder groups or proxy advisory firms in Mexico whose views are considered.

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

The authority to appoint and remove directors is vested in the shareholders. Unless otherwise provided in the by-laws, the shareholders may appoint and remove members of the board of directors (or the sole director) by a majority vote. Pursuant to article 144 of the General Law of Business Organisations (LGSM), if there are more than three members of the board of directors, shareholders representing at least 25 per cent of the capital stock of the company have the right to appoint at least one member. In a stock corporation (SA) adopting an investment promoting a special regime (SAPI), shareholders representing at least 10 per cent of the capital stock of the company shall have the right to appoint at least one member of the board of directors, and the removal of this member by the remaining shareholders (that is, the non-appointing shareholders) may only take place if the shareholders remove all members of the board of directors.

Pursuant to article 178 of the LGSM, the shareholders' meeting is the supreme corporate body of an SA, and its resolutions must be complied with by the board of directors or sole director.

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The shareholders' meeting is the supreme corporate body of a company and has full power and authority to approve any matter concerning the company's affairs; thus, there are no matters subject to non-binding shareholder voting.

The LGSM does include certain matters that are reserved to the shareholders, and, thus, any other matter may be resolved by (not reserved to) the board of directors or managers. Matters reserved to the shareholders are:

- the approval of financial statements and the annual report prepared by the board of directors or managers of the company;
- the appointment and removal of the members of the board of directors and the statutory auditor;
- extension of the company's duration;
- dissolution of the company;
- increase or reduction of the company's capital stock;
- change of the company's corporate purpose;
- change of the company's nationality;
- conversion of the company;
- any merger of the company;
- issuance of preferential shares;
- share redemption or repayment;
- bond issuance;
- any amendment to the by-laws; and,
- any other decision reserved to the shareholders pursuant to the by-laws of the company.

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

Pursuant to the LGSM, the by-laws of an SA may allow for the issuance of shares that:

- do not confer or confer to its holders limited voting rights;
- grant non-economic rights to its holders other than the right to vote, or exclusively grant the right to vote; or
- grant veto rights to its holders or require the favourable vote of one or more shareholders to adopt resolutions in a general shareholders' meeting.

In addition to the type of shares referred to above, a SAPI may also issue shares that limit or broaden the rights of its holders to profit distribution and other special economic rights.

A limited liability companies (SRL) may issue quotas or partnership interests representing different categories, but in no event may a partner be excluded from profit-sharing as provided in the LGSM; a rule that applies also to SAs.

Article 196 of the LGSM indicates that if a shareholder in a certain transaction has for his or her own account, or that of another, an interest contrary to that of the company, he or she must refrain from any deliberation related to this transaction. The shareholder who goes against this provision will be responsible for damages when, without this vote, the majority necessary for the validity of the determination would not have been obtained.

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Pursuant to the LGSM, a shareholders' meeting shall be formally called by the sole director, the board of directors, the statutory auditor or, in certain specific events, by a competent judge, through a notice published in the electronic system managed by the Ministry of Economy. The call shall be published in accordance with the by-laws, or at least 15 calendar days in advance of the meeting if the by-laws are silent in this regard. The publication of the call may be omitted if at the time at which the resolutions are adopted, the totality of the shares representing the capital stock of the company are present or duly represented at the shareholders' meeting.

Shareholders may be represented at a shareholders' meeting by a proxy, who may or may not be part of the company, but in any event a member of the board of directors or a statutory auditor may not act as a proxy of a shareholder.

In addition to the foregoing, companies may include in their by-laws additional requirements for shareholders to participate or vote in the shareholders' meeting (ie, submitting or depositing with a corporate officer or a third party the stock certificate prior to the meeting and being registered in the shareholders' registry book of the company).

If provided in the company's by-laws, shareholders may adopt resolutions in lieu of a meeting, but these resolutions shall only be valid and binding if adopted by unanimous consent of the shareholders and confirmed in writing.

According to the LGSM, shareholders' meetings must be held at the corporate domicile of the company (a physical place within the relevant jurisdiction) unless acts of God or force majeure occur. However, shareholders' meetings may be conducted remotely (including virtual meetings), to the extent that the requirements set forth in the above paragraph are met.

In the case of SRLs, partners' meetings shall be called by the managers through certified letters (acknowledgment of receipt requested) at least eight days in advance to the date of the meeting. If the managers fail to make the call, then the call may be made by the surveillance committee, and if this corporate body has not been appointed or fails to make the call, then partners representing more than 75 per cent of the capital stock may make the call.

The by-laws of an SRL may include matters that do not require a meeting to be convened, and these matters may be resolved by the partners in writing through certified letters. Notwithstanding this, partners representing a least 75 per cent of the capital stock may require that any of these matters are discussed and approved in a duly convened meeting.

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Shareholders of an SA who represent at least 33 per cent of the shares representing the capital stock of a company may request the sole director, the board of directors or the statutory auditor to call for a meeting to discuss the matters set forth in the request. In a SAPI, this right may be exercised by shareholders representing at least 10 per cent of the capital stock of a company.

In addition, any shareholder of an SA may request the sole director or the board of directors to call for a meeting when a statutory auditor is not in office or when a shareholders' meeting has not occurred during two consecutive fiscal years, or, if it did occur, the financial information or the removal, appointment or ratification of the sole director or the members of the board and statutory auditor has not been discussed and approved. If the sole director, the board of directors or the statutory auditor fail to make the relevant call, the shareholders or shareholder may request a competent judge to make the call.

The shareholders' meeting is the supreme corporate body of a company and has the authority to remove, appoint and ratify the sole director or the members of the board of directors, and to override any wish or resolution of the board.

In the year 2014, the LGSM was amended seeking to incorporate more flexible rules among shareholders. Accordingly, the corporate by-laws of an SA expressly allow the issuance of shares that confer veto rights with respect to resolutions of the general shareholders' meeting or that always require the favourable vote of one or more shareholders.

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

In general terms, controlling shareholders owe no duty to the company or to the non-controlling shareholders. However, we can summarise the following rights afforded to minority shareholders:

- the right to call shareholders' meetings to address matters within their competence;
- the right to suspend a shareholders' meeting to defer the voting of a matter on which they consider they are not sufficiently informed;
- the right to obtain the suspension of a resolution when it is considered that in a shareholders' meeting a particular clause or provision of law has been breached; and
- in cases of groups representing 10 per cent (SAPI) and 25 per cent (SA) of the capital stock, the right to appoint a

board member or statutory examiner and exercise a legal action for responsibility against those administrators and examiners when their performance is not in compliance with what is set forth in the by-laws and the law.

Also, shareholders representing at least 25 per cent of the capital stock of an SA or 20 per cent of the capital stock of a SAPI may oppose to the resolutions adopted at a shareholders' meeting through a judicial procedure.

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

Corporate veil principles are contemplated in the LGSM for SAs and SRLs, and, thus, shareholders or partners will only be liable up to the amount of their contributions to the company. However, shareholders or partners may be held liable for certain acts or omissions of the company in violation of tax and criminal laws. In addition, if a shareholder is a manager or director of the company or carries out its legal representation, and this company is not recorded at the public registry of commerce, then the shareholder shall be jointly and limitlessly liable with the company for all acts performed with third parties.

Employees

What role do employees have in corporate governance?

Neither the LGSM nor the Securities Market Law grant corporate governance rights in favour of employees. However, if provided in its by-laws an SA may issue shares in favour of its employees, and at the time of issuance the shareholders shall set forth the rights and duties inherent to these shares, which may include the right to appoint a member of the board. In addition, companies may adopt policies or guidelines imposing specific obligations for its employees with respect to corporate governance activities.

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

Yes; there are no specific provisions in the General Law of Business Organisations (LGSM) that prohibit anti-takeover devices.

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

No; the board of directors may not issue shares, as it is a matter reserved to the shareholders' meeting. The LGSM sets forth that shareholders will have a pre-emptive right to subscribe newly issued shares in the event of an increase in the capital stock, in proportion to the number of shares they hold at the time of issuance. However, the LGSM and the Securities Market Law also allow limiting or regulating the exercise of this right.

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Yes; the by-laws of a stock corporation or a stock corporation adopting an investment promoting a special regime may include restrictions for the sale or transfer of shares, such as requiring the prior approval of the shareholders' meeting or the board of directors. Additionally, shareholders may enter into agreements limiting or restricting the sale and transfer of shares, such as rights of first offer, rights of first refusal, tag-along rights, drag-along rights and put and call options.

In a limited liability company (SRL), the transfer of quotas must be previously approved by the partners' meeting, and if the transfer is to be completed with a person that is not a partner, the other partners have the right of first refusal.

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Compulsory repurchase agreements are not allowed under Mexican law. However, put and call options over shares may be validly adopted.

Dissenters' rights

Do shareholders have appraisal rights?

No. According to the LGSM, resolutions validly adopted by a shareholders' meeting shall be binding on absent and dissenting shareholders, without prejudice to shareholders' opposing or other rights.

Articles 206 and 228-bis of the LGSM establish that any dissenting shareholder may exercise a separation right when the shareholders' meeting adopts resolutions regarding the change of the corporate purpose, the change of nationality or the conversion or spin-off of the company. This shareholder shall have the right to reimbursement of his or her shares, in proportion to the company's assets.

In addition, the LGSM provides that the by-laws of a company may include events and procedures for the shareholders to exercise separation and retirement rights.

In an SRL, minority partners have the right to retire from the company when majority partners approve that a manager delegates his or her authority to a person alien to the company.

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The General Law of Business Organisations (LGSM) contemplates a single body or tier of directors, or sole director, that takes the strategic decisions of a company. Listed companies shall have a board of directors and at least two committees (an audit committee and a corporate practices committee) that are entitled to carry out different activities regarding, among other things, the supervision of corporate governance and the assistance provided to the board of

directors in connection with accounting processes and the presentation of financial information and financial statements.

These committees may be integrated by the independent members of the board of directors of the listed company.

Board's legal responsibilities

What are the board's primary legal responsibilities?

As it may be limited or restricted by the by-laws and applicable law, the primary duties of directors and managers are to represent the company and to perform all transactions that are inherent to the company's corporate purpose.

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

The board of directors represents the company and owes legal duties to it and its shareholders.

Shareholders have the right to appoint one or more statutory auditors, whose responsibility it is to oversee the performance of the board of directors or sole administrator and report on its activities. Statutory auditors can demand from the directors monthly reports on the company's financial information and carry out a review of transactions and records. The statutory auditors must provide a report to the shareholders on the sufficiency and authenticity of the information submitted by the board to the shareholders' meeting. In listed companies, these duties are performed through the audit and corporate practices committees and the external auditors.

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgement rule?

Yes. The shareholders' meeting may determine and require the liability of the directors and shall appoint the individual that shall be in charge of enforcing the corresponding action. Minority shareholders representing at least 25 per cent of the capital stock of the company may directly bring an action against directors, provided these shareholders voted against not requiring liability from a director, and the claim includes all liability in favour of the company and not just in favour of the interest of these shareholders. In a stock corporation (SA) adopting an investment promoting a special regime (SAPI), this action may be enforced by shareholders representing at least 15 per cent of the capital stock.

In limited liability companies (SRLs), an action against managers may be exercised by the partners' meeting or by each partner individually unless at least 75 percent of the partners have released the relevant managers from liability. An action against managers may also be exercised by creditors, but only after the company has been declared bankrupt.

Care and prudence

Do the duties of directors include a care or prudence element?

In general terms, members do have a fiduciary duty to the shareholders, partners and the company. In terms of applicable law and the corresponding by-laws of a company, directors and managers must protect and look out for the company's interests and shall refrain from participating in decisions in which they may have a conflict of interest.

Directors of listed companies must observe the duties of care and loyalty as outlined in the Securities Market Law

(LMV).

Board member duties

To what extent do the duties of individual members of the board differ?

The general rule is that all directors or managers have the same duties, voice and vote at the board. Under the LMV, board members shall perform their duties seeking to create value for the company without favouring a shareholder or group. However, pursuant to the LGSM, the chair of the board of directors, unless otherwise provided in the by-laws, has a tie-breaking vote in resolutions adopted by the board of directors and is also in charge of the formalisation and execution of the resolutions adopted by the board of directors.

In addition to the foregoing, subject to applicable law, the by-laws of a company may set forth specific duties for other positions within the board of directors (chair, secretary, etc).

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

According to the LGSM, the discharge of duties by a director is personal and may not be performed through representatives. However, the board, as a collegiate body, and without limiting its legal and statutory liability, may create committees or appoint general or special managers to perform certain actions. Furthermore, the board or sole director may confer powers of attorney to individuals to be exercised on behalf of the company for the performance of actions. In any event, the appointment of general or special managers and attorneys may in fact be revoked at any time.

In an SRL, a manager may delegate its duties if authorised by the partners' meeting.

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Under the LGSM, there is no requirement to appoint non-executive or independent members to the board of directors.

Pursuant to the LMV, at least 25 per cent of the members of the board of directors of listed companies shall be independent.

There is no particular definition of independent director, but an independent director should be selected by a company because of his or her expertise, capacity and professional reputation, and considering that he or she may perform his or her duties free of conflicts of interest and without being subject to personal or economic interests.

The LMV establishes that none of the following persons may be appointed as an independent director:

1. relevant officers or employees of the company or companies that are part of the group of which the listed company is part, as well as the examiner of the aforementioned companies;
2. persons with considerable influence or control over the listed company or companies that are part of the group of which the listed company is a part;
3. persons that are part of the group of people that maintain control over the listed company;

4. clients, service providers, debtors, creditors, partners, directors or employees of a company that is a relevant client, service provider, debtor or creditor; and
5. persons with familiar or affinity relationships with any of the persons listed in sections (1) to (4) above.

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

In non-listed companies, management may be entrusted to a sole director or manager, or to a board, as may be provided in the company's by-laws. The board shall be composed of at least two members, and the number of seats may be determined by the shareholders' meeting, as provided in the company's by-laws. For listed companies, the board must be composed of no more than 21 members, as determined by the shareholders, and at least 25 per cent of the relevant members must be independent members.

Pursuant to applicable law, the shareholders shall appoint, remove and ratify the sole director or manager or the members of the board of directors by majority, in the understanding that, in an SA, minority shareholders representing at least 25 per cent of the capital stock must appoint at least one member, and in SAPIs this percentage shall be 10 percent.

Exceptionally, the statutory auditor of an SA may fill in vacancies in the board when there is a lack of a quorum at shareholders' meetings to adopt resolutions. There are no specific provisions or differences in connection with newly created directorships.

In listed companies, the board of directors may fill in vacancies when a member is not replaced by the shareholders within a 30-day period or in the case that this vacancy results in lack of quorum for adopting resolutions.

Other than the prohibition to appoint as a member of the board an individual that has been banned from performing commercial activities, Mexican law does not set forth any additional guidelines, criteria or requirements to appoint members to the board.

Pursuant to the General Provisions Applicable to Issuers and Other Participants of the Securities Market (CUE), listed companies are required to disclose the composition of their board. As provided in the Commerce Code, non-listed companies may opt to disclose the composition of their board of directors or managers by recording the relevant appointments at the Public Registry of Commerce.

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

There is no law or regulation in this regard. However, separating the functions of the board chair and CEO is a generally recognised as best practice, considering that the CEO is required to report on the day-to-day management to the board.

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Pursuant to the LGSM, there are no mandatory board committees; however, companies may create board committees if and as permitted by their respective by-laws.

According to article 25 of the LMV, the board of directors of listed companies shall be assisted by one or more committees that carry out activities in connection with corporate practices and auditing. The committee or committees shall be integrated by independent directors and, by a minimum of three members, appointed by the board of directors. In the case of listed companies that are controlled by a person or group of persons that hold 50 per cent or more of the capital stock, the corporate practices committee must be integrated by at least a majority of independent directors.

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

No. However, in accordance with the LGSM and the LMV, the shareholders must hold at least one annual shareholders' meeting within the first four months of each year, approving, among other things, the report submitted by the board of directors or managers with respect to the company's performance in the previous fiscal year, as well as the policies adopted by directors and, as applicable, the main existing projects of the company, and this implies that the board of directors or managers must meet at least once a year to discuss and prepare the relevant report required to be submitted for shareholders' approval. In addition, the by-laws of a company may provide for a minimum or maximum number of board meetings required to occur during a calendar year.

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

No. However, certain information regarding board practices may be disclosed by a company as part of other disclosures required to be made in terms of applicable law (ie, the annual report, shareholders' resolutions and requests and applications for launching tender offers).

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

Although it is not strictly an evaluation of the board, the statutory auditor of an SA must review and certify the veracity, sufficiency and reasonableness of the information presented by the board of directors to the shareholders' annual meeting in respect of the company's performance, financial, accounting and commercial affairs and the main policies followed by the management of the company during the previous fiscal year, and it must also prepare a report (to be attached to the board's report) in which this statutory auditor opines on:

- whether the accounting and information policies and criteria followed by the company were adequate and fit to the particular circumstances of the company;
- whether those policies and criteria were duly applied in the information presented by the board of directors; and
- if the information presented by the board of directors reflects in a truthful and sufficient way the financial situation and the results of the company.

In addition, the CEO, the corporate practices committee and the audit committee of a listed company must prepare and submit on annual basis to the board of directors a report containing certain information regarding the financial situation of the company and an assessment on whether the policies (accounting, information, etc) and resolutions adopted by the board of directors and the shareholders of the company have been executed during the relevant year.

The board of directors must submit each report to the shareholders' meeting for approval, together with its opinion in respect of their contents. The reports and the board's opinion on them, shall be disclosed in the terms and for the purposes of the CUE.

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

The remuneration of directors is determined by the shareholders' or partners' meeting of a company at its sole discretion.

Although there are no specific provisions or listing rules governing the directors' service contracts, article 181 of the General Law of Business Organisations (LGSM) states that members of the board shall be appointed, removed or ratified on an annual basis. Additionally, article 154 of the LGSM provides that directors will continue in the performance of their duties even when the term for which they were appointed has expired, until their replacements have been appointed and have taken office.

Transactions between a company and its directors or managers may be considered by particular laws and regulations (such as anti-money laundering and compliance laws) as related party transactions and, thus, be subject to meeting certain requirements or formalities.

Listed companies have the obligation to disclose in their annual report the total amount of compensation and benefits being paid to the directors and officers.

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

There is no law or regulation governing the remuneration of the senior management of non-listed companies.

Pursuant to the Securities Market Law, the board of directors of listed companies shall approve the appointment and

remuneration policies of high-level officers and managers, as well as the policies for granting loans or guarantees in favour of these managers; however, there are no regulations or guidelines regarding how these policies shall be determined.

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

The shareholders' or partners' meeting is the supreme corporate body of a company and may discuss, resolve, approve and authorise any matter. Notwithstanding this, it is not common for the shareholders to be involved in executive remuneration, as it is typically a matter attended by the board.

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability insurance is permitted but is not common practice. However, obtaining and maintaining these types of insurance policies is becoming frequent practice in Mexican listed companies. In any event, there are no restrictions on a company regarding paying the insurance premiums.

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

There are no restrictions on indemnifying directors and officers, but it is not common practice.

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

Although not common, there are no legal restrictions on a company regarding covering or advancing expenses to a director, a manager or an officer to defend himself or herself from an action brought against him or her by a third party, or acting as a witness.

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

Companies or shareholders may limit the liability of directors and officers by offering certain immunity towards the company or the shareholders (ie, exempting them from claims for liability incurred in their professional capacity); this is

common when the company or shareholders are willing to offer attractive incentives to certain individuals to accept appointments as board members. Regarding liability toward third parties, this cannot be limited; however, the company and the shareholders may reduce liability attributable to directors and officers through the implementation of robust corporate governance, ethics and compliance policies and programmes, including provisions stating that in the case of breach of laws or a company's regulations, liability shall or may be attributed to other officers or members.

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

Yes. Once incorporated, companies are required to record the relevant deed (which includes the charter and the by-laws) before the Public Registry of Commerce corresponding to their corporate domicile. The public registry only discloses excerpts of the main clauses of the by-laws of the companies to the public upon request. Nonetheless, because almost every company is incorporated before a notary public, and all notaries public in Mexico are required to file all deeds granted before them at a national archive, at some point a third party may obtain a copy of the full deed of incorporation from this archive

Company information

What information must companies publicly disclose? How often must disclosure be made?

Pursuant to the Code of Commerce, each company must have a commercial folio in which the following information shall be included and updated as amended:

- the corporate name;
- the corporate purpose;
- duration;
- the corporate domicile and branches, if any;
- public instruments evidencing its incorporation, conversion, mergers, spin-offs, dissolution and liquidation; and
- at the company's discretion, appointments, resignations or removals of officers, as well as the powers of attorney granted by the company (although registration of certain powers, such as powers for granting and issuing negotiable and credit instruments, is mandatory).

Additionally, in accordance with a reform to the General Law of Business Organisations, published on 14 June 2018 in the Federal Official Gazette, which came into effect on 15 December 2018, stock corporations (SAs) and limited liability companies (SRLs) must disclose the entries and registrations of shareholders or partners, respectively, and the transfer of shares or equity quotas that are recorded in the company's shareholders' registry book (for SAs) or in the company's special partners' book (for the SRLs). The corresponding disclosure must be carried out through publication in the electronic system for publications of commercial companies of the Ministry of Economy.

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

There are no restrictions on shareholders for nominating directors and having them included in materials prepared and distributed at the company's expense. Shareholders that reach a certain percentage in the capital stock of a company not only have the right to nominate but also to appoint a director.

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

Yes. Engagement by the company with its shareholders is carried out through the board of directors, the chair of the board, the secretary of the board and the statutory auditor.

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

There are no obligations under applicable law regarding the disclosure by a company of corporate social responsibility matters. However, under specific requirements arising from environmental laws, entities regulated thereunder are required to report, among other things, carbon emissions. Additionally, the Mexican Stock Exchange has implemented sustainability evaluations whereby companies must produce and submit sustainability reports to be rated in sustainability indexes and reports.

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

There are no requirements in this regard.

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

There are no requirements in this regard.

A set of amendments to the Securities Market Law may become effective in the near future, requiring listed companies to disclose the number of women appointed as board members and whether parity policies are in place.

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

The increasing sophistication and the implementation of programmes and policies relating to corporate governance continues to be a trend among Mexican companies and international companies doing business in Mexico.

Governance policies are particularly focused on establishing and implementing risk controls and mechanisms to avoid liability from a tax, labour, anti-money laundering and anti-corruption standpoint.

Moreover, the Mexican congress is active in discussing amendments to labour laws and regulations that may require companies to rethink and restructure the manner in which its workforce is hired. This will entail substantial corporate reorganisations to meet any new requirements.

Topics such as gender equality, gender pay gap reduction, and the prevention, detection and remediation of conflicts of interest, as well as best practices for preventing, avoiding, detecting and sanctioning discriminatory practices, continue to be the most significant and recurrent governance trends in the Mexican market.

LAW STATED DATE

Correct on

Give the date on which the information above is accurate.

30 April 2020